

Unclassified

SECURITY CLASSIFICATION OF THIS PAGE (When Data Entered)

REPORT DOCUMENTATION PAGE		READ INSTRUCTIONS BEFORE COMPLETING FORM
1. REPORT NUMBER	2. GOVT ACCESSION NO	3. RECIPIENT'S CATALOG NUMBER
4. TITLE (and Subtitle) Waffen SS: Friend or Foe? "The 1978 Holtzman Amendment to the Immigration and Nationality Act		5. TYPE OF REPORT & PERIOD COVERED
7. AUTHOR(s) LTC Daniel E. Ross		6. PERFORMING ORG. REPORT NUMBER
9. PERFORMING ORGANIZATION NAME AND ADDRESS		8. CONTRACT OR GRANT NUMBER(s)
11. CONTROLLING OFFICE NAME AND ADDRESS		10. PROGRAM ELEMENT, PROJECT, TASK AREA & WORK UNIT NUMBERS
14. MONITORING AGENCY NAME & ADDRESS (if different from Controlling Office)		12. REPORT DATE 9 May 1989
		13. NUMBER OF PAGES 52
		15. SECURITY CLASS. (of this report) Unclassified
		15a. DECLASSIFICATION/DOWNGRADING SCHEDULE
16. DISTRIBUTION STATEMENT (of this Report) Unclassified Approved for public release distribution unlimited.		
17. DISTRIBUTION STATEMENT (of the abstract entered in Block 20, if different from Report) Unclassified		
18. SUPPLEMENTARY NOTES		
19. KEY WORDS (Continue on reverse side if necessary and identify by block number)		
20. ABSTRACT (Continue on reverse side if necessary and identify by block number) This study is an examination of the 1978 Holtzman Amendment to the Immigration and Nationality Act: Nazi Germany (P.L. 95-549). The focus of the study is three fold; to examine the law itself and the impetus behind its enactment; to study one specific population affected, former members of the Waffen-SS; and review its enforcement by mid-level bureaucrats in the service of the United States Government. This study also provides a short history of the Waffen-SS as an army. This		

DD FORM 1 JAN 73 1473

EDITION OF 1 NOV 65 IS OBSOLETE

Unclassified

SECURITY CLASSIFICATION OF THIS PAGE (When Data Entered)

Unclassified

SECURITY CLASSIFICATION OF THIS PAGE(When Data Entered)

history is provided as a backdrop for the study so that the reader can thoroughly understand why the Holtzman Amendment may be prejudicial and unfair to some aliens wanting permission to enter the United States.

The conclusions drawn from this study cast a shadow of doubt over the bill's popularity at the time of its passage. They also question the legality of certain provisions even though it has been tested many times in the courts of the United States. Finally, the study illustrates that even though Congress provides specific direction and guidance when a bill is passed, that direction and guidance is sometimes ignored by the departments of government charged with the bill's implementation.

Unclassified

SECURITY CLASSIFICATION OF THIS PAGE(When Data Entered)

UNCLASSIFIED

USAWC MILITARY STUDIES PROGRAM PAPER

The views expressed in this paper are those of the author and do not necessarily reflect the views of the Department of Defense or any of its agencies. This document may not be released for open publication until it has been cleared by the appropriate military service or government agency.

WAFFEN SS: FRIEND OR FOE?
"THE 1978 HOLTZMAN AMENDMENT
TO THE
IMMIGRATION AND NATIONALITY ACT"
AN INDIVIDUAL STUDY PROJECT

by

LTC Daniel E. Ross

Dr. Samuel S. Newland
Project Advisor

DISTRIBUTION STATEMENT A: Approved for public
release; distribution is unlimited.

U.S. Army War College
Carlisle Barracks, Pennsylvania 17013
9 MAY 1989

UNCLASSIFIED

ABSTRACT

AUTHOR: Daniel E. Ross, LTC, TC

TITLE: Waffen SS: Friend or Foe? "The 1978 Holtzman Amendment to the Immigration and Nationality Act"

FORMAT: Individual Study Project

DATE: 9 May 1989

PAGES: 49

CLASSIFICATION: Unclassified

for p. 2 - This study examines
This study is an examination of the 1978 Holtzman Amendment to the Immigration and Nationality Act: Nazi Germany (P.L. 95-549). *The focus of the study is three fold; to examine the law itself and the impetus behind its enactment; to study one specific population affected, former members of the Waffen-SS; and reviews its enforcement by mid-level bureaucrats in the service of the United States Government. The purpose*

W
This study also provides a short history of the Waffen-SS as an army. This history is provided as a backdrop for the study so that the reader can thoroughly understand why the Holtzman Amendment may be prejudicial and unfair to some aliens wanting permission to enter the United States. *The study's conclusion*

The conclusions drawn from this study cast a shadow of doubt over the bill's popularity at the time of its passage. They also question the legality of certain provisions even though it has been tested many times in the courts of the United States. Finally, the study illustrates that, even though Congress provides specific direction and guidance when a bill is passed, that direction and guidance is sometimes ignored by the departments of government charged with the bill's implementation. *Federal Law, Code*



Accession For	
NTIS GRA&I	<input checked="" type="checkbox"/>
DTIC TAB	<input checked="" type="checkbox"/>
Unannounced	<input type="checkbox"/>
Justification	
By	
Distribution/	
Availability Codes	
Dist	Avail and/or Special
A-1	

TABLE OF CONTENTS

	Page
ABSTRACT	ii
CHAPTER I. INTRODUCTION	1
II. THE HOLTZMAN AMENDMENT OF 1978: CLOSED DOOR OR OPEN SEASON?	5
III. THE WAFFEN SS: OF DUBIOUS POLITICAL ORIGIN OR JUST SOLDIERS?	15
IV. THE POWER OF THE BUREAUCRAT	30
V. CONCLUSION	39
BIBLIOGRAPHY	44

WAFFEN-SS: FRIEND OR FOE?
"THE 1978 HOLTZMAN AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT"

CHAPTER 1

INTRODUCTION

Although the war with Germany's Third Reich was ^{concluded 1/4} brought to a successful conclusion forty-four years ago, some of our former enemies are today haunted by a limitation levied on their basic freedom by the United States. ¹⁻⁻¹ Not a life threatening limitation or one that is degrading to one's person, yet a freedom we Americans hold dear; the right to cross international borders of friendly nations. ^{Post 20} These former enemies, that are prohibited from entering the United States, are not the war criminals tried at Nuremburg nor even those who escaped prosecution by fleeing to South America. Most were ^W just ordinary soldiers who fought for their country in a very elite formation, The Waffen-SS.

Mere utterance of the SS brings thoughts of murder, brutality and racial extermination. Even some well-educated high-ranking American officers with adequate knowledge of World War II are fully convinced that members of the Waffen-SS were criminals of the worst sort (1) or a group of sinister, plotting political thugs who would today reclaim the world if only the chance presented itself. This is far from the truth but unfortunately, if a survey were taken among the general population of the United States, this line of thinking prevails today. Mere attachment to the SS family tree has cast a long shadow over all former members of the Waffen-SS.

"Rarely has an army had to pay such a high price for defeat as the Waffen-SS." (2) This statement from the HIAG (3) sums up well what has happened with respect to many members of the Waffen-SS who wish to visit the

United States. Many are denied a visa by the State Department even though the law does not specifically preclude entry. The system is extremely subjective in nature, veiled by the mystique of the foreign service officer in charge. Few, if any, rules or departmental regulations have, by design, been published.(4) This allows for great flexibility by those administering the law and has given former Waffen-SS members the impression that they are being treated unfairly if not prejudicially.(5)

To a person who has had close ties to these former Waffen-SS soldiers it is natural to ask why this group is so closely scrutinized so long after the war and why many are denied entry to the United States. Most of these old soldiers, although leery of the average American, have strong feelings of friendship toward the United States. Many have developed close relationships with American soldiers stationed in Germany and are very active supporters of German-American relations. Yet, a permanent shadow of doubt is cast over this relationship by the closed borders of the United States.

Another perplexing question is why, at great expense, the United States continues to pursue many former SS soldiers living in the United States as if they were guilty unless proven otherwise. In some respects these former elite soldiers have, because of their birthright, become victims themselves.(6)

This paper is not an attempt to portray the Waffen-SS as knights in shining armor. They were, after all, our enemy during World War II and were as feared as the Japanese Samurai.(7) However, it will attempt to establish a line of thought that clearly demonstrates that the Waffen-SS were elite soldiers and are guilty by their organizational connections with the butchers of the Allgemeine-SS, rather than due to their deeds, and under immigration law should

be considered as a separate and distinct category. It will show how the highly subjective system that is now in place merely fosters the belief that all former members of the Waffen-SS will be denied entry and that United States immigration law is unfair and not consistently administered.

To clearly understand the issues, it is necessary to examine the makeup of the SS formations and examine an abbreviated history of the Waffen-SS. The laws of the United States as they apply to the Waffen-SS or as they infringe on the rights of former members of the organization, will also be examined.

ENDNOTES

1. In a conversation with an American Lieutenant General currently on active duty, he exclaimed, "all SS Generals were tried and convicted at Nuremburg". It was clear that he lumped all members of the SS together in one category and had no idea of the difference between the Allgemeine-SS and the Waffen-SS. This officer is well-educated and has served at very high levels of command in Germany.

2. Bruce Quarrie, Hitler's Samurai: The Waffen SS in Action, p. 7.

3. Hilfsgemeinschaft auf Gegenseitigkeit (HIAG)--The Mutual Aid Association of former Waffen-SS soldiers, formed by Paul Hauser, headquartered in Ludenscheid, West Germany. This is a nationwide organization with chapters in every West German state. Primary focus of the organization is to gain recognition of the Waffen-SS as a legitimate extension of the Wehrmacht.

4. Interview with Cornelius Scully, Chief, Office of Legislation, Regulations, Advisory Assistance, Consular Affairs Division, U.S. Department of State, Washington, 13 January 1989.

5. There is a general perception among members of the HIAG that membership in the Waffen-SS is grounds for automatic exclusion from the United States.

6. In a telephone interview with Ms. Sylvia Lerner, an associate of Ms. Holtzman (the author of the Holtzman Amendment), she allowed that the Holtzman Amendment may have developed a class of victims that was not intended. She had no intent, however, to acknowledge that the law should be changed just to accommodate this group of former Waffen-SS.

7. The Samurai warriors of Japan, fierce in battle like the Waffen-SS, swore an oath to unconditional loyalty and obedience. Bruce Quarrie draws a comparison of the Waffen-SS, the Samurai and the Catholic order of Jesuits in his book, Hitler's Samurai: The Waffen SS in Action.

CHAPTER 2

THE "HOLTZMAN AMENDMENT OF 1978: CLOSED DOOR OR OPEN SEASON?

The legal basis for refusing former members of the Waffen-SS entry into the United States is Public Law 95-549, commonly referred to as the Holtzman Amendment of 1978. The Holtzman Amendment is a piece of legislation that was personally authored, introduced and shepherded through Congress by Representative Holtzman on behalf of her constituency. Today, many years after her departure from Congress, she is still a staunch supporter of its enforcement.

The 1978 Holtzman Amendment, "Nazi Germany", to the Immigration and Nationality Act was intended to close presumed loopholes in existing legislation which allowed Nazi war criminals to enter the United States and acquire citizenship. This amendment was to be the catch-all law to once-and-for-all rid the United States of undesirable aliens and naturalized citizens that were perceived to be Nazi war criminals. In the words of Elizabeth Holtzman (D-N.Y.), the bill's drafter, "The presence of Nazi war criminals in the United States constitutes the unfinished business of World War II. By taking a forthright stand against allowing these mass murderers a haven in this country, we will not only reaffirm our commitment to human rights but we will be making it clear that persecution in any form is repugnant to democracy and to our way of life".(1) This is a strong message by any standard and clearly, through descriptive language, clarifies the intent of it's purveyor. While the act officially focuses on Nazi war criminals, it could be argued that it was intended, by unwritten design, to produce a dragnet of sorts that would cause

U.S. officials to scrutinize almost any naturalized citizen or visitor to the United States who could in any way be linked to the Nazi government of Hitler's Third Reich.

Ms. Holtzman was the Congressional representative of the people of Brooklyn, New York. Within her former constituency is a large Jewish population of which she is a member. In 1974 she was confronted by a constituent and informed that Nazi war criminals were walking the streets of the United States, possibly her own district. Specific names, information and dates were provided and the crusade began. (2) Some of the information she would uncover in the course of her investigation would be disturbing. Not only was she convinced that there were Nazi war criminals living in the United States but worse, the government was doing nothing to investigate allegations or initiate deportation. In fact, a good case could be argued that the government may have had a hand in the immigration process in exchange for intelligence information against the Soviets.

Two cases examined by Ms. Holtzman are cited to illustrate the problem and assist in understanding her interest in enacting the legislation.

1. Andrija Artukovic entered the U.S. in 1948 as a temporary visitor. Eventually he became an overstayed visitor. Allegations were levied that as the Minister of the Interior and Minister of Justice of the Nazi Independent State of Croatia, he signed decrees that ended in the execution of thousands of Jews, Serbs, Gypsies and others. He was ordered deported from the United States in 1951, but to date no action has been taken due to the contention that deportation to Yugoslavia would subject him to physical persecution. His

request for citizenship was introduced in a personal bill by four members of Congress. This Act of Congress did not sit well with Ms. Holtzman. (3)

2. In another case Archbishop Valerian Trifa served in the Romanian Iron Guard as president of the National Union of Romanian Christian Students and also as the editor of the newspaper Libertatia (openly identified with the Iron Guard). He is alleged to have advocated anti-semitic policies and the persecution of Romanian Jews. He was also responsible for publishing a manifesto in 1941 that urged the replacement of all Judah-like masons in the government. The consequence of the manifesto was a rebellion in which thousands of innocent civilians were killed. (4)

To Ms. Holtzman's amazement, Trifa on one occasion gave the opening prayer in the U.S. Senate in 1955. She also discovered that several other suspected Nazi war criminals were employed by the government. Most had contacts with the Central Intelligence Agency (CIA) or the Federal Bureau of Investigation (FBI). Much to her dismay Ms. Holtzman noted in 1979 that the government continued its open association with suspected Nazi war criminals. She cited an example where Archbishop Trifa was interviewed on a Radio Free Europe religious program. (5)

Based on the cases above it is very easy to gain an appreciation for Ms. Holtzman's concern about Nazi war criminals in the United States. It is also very understandable how frustrated Ms. Holtzman must have been when the White House (Carter Administration) issued a cavalier statement that her concern over the Radio Free Europe, Trifa incident, was "silly" and that Archbishop Trifa, as an American citizen, represented an important ethnic group. (6)

Between her personal conviction that the country must be rid of these criminals and the obvious lack of understanding or care by the administration, her tenacious crusade is well justified. However, it is apparent that she never took into consideration the possible second order effects of her legislation. Consideration was not given to the wider range of people that the bill might encompass, diplomatic embarrassment to the United States that the bill might cause, or personal hardships to some of those who were forced to defend themselves. In light of this, it is possible that the perceived persecutors may now become victims. It is even more likely that guilt by association will also surreptitiously indict the Waffen-SS, as a group, as was the case at Nuremburg.

During the legislative process, Ms. Holtzman characterized the bill as "non-controversial".(7) However, the bill did not escape criticism by an astute representative, Congressman Charles E. Wiggins (R-Ca.). He contended that the bill "would amount to ex post facto law and might amount to punishment through legislation".(8) Mr. Wiggins reluctantly opposed the bill because he contended the House Judiciary Committee had specific individuals in mind when it drafted the bill. If so, this would then become a bill of attainder or one that is designed to inflict punishment on certain individuals as easily identifiable members of a group thus precluding them the right to a trial. (9)

Others objected to the bill, during hearings because it failed to define "persecution". Specific wording in the bill states;

"Any alien who during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with-

"(A) the Nazi government in Germany,

"(B) any government in any area occupied by the military forces of

the Nazi government of Germany,

"(C) any government established with the assistance or cooperation of the Nazi government of Germany, or

"(D) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion." (10)

Critics were concerned that the original wording of the bill, that did not specify (A), (B), (C) and (D) above, would also encompass British soldiers who persecuted Catholics in Northern Ireland, White South Africans, Rhodesians and maybe even some South Vietnamese that were currently in residence in the United States. (11) The bill was tightened and its scope clearly focused on its target audience, Nazis of Germany's Third Reich.

The Holtzman Amendment was approved by Congress on 13 October 1978. It was designed to exclude from entry and to deport from the United States all aliens who actively persecuted any person on the basis of race, religion, national origin or political opinion under the direction of the Nazi government of Germany. It is important to realize that the Amendment was a laborious effort to right a supposed injustice remaining from World War II. The intent in the beginning may have been pure and truly oriented toward legally removing undesirables from the United States. However, the end result is a convolution of the original intent. That is, its wording was made acceptable to all but, did not take into consideration the second order effects it would have on some naturalized citizens and aliens, and thus raises serious doubt as to its

constitutionality, in the mind of the common man. Specifically in question are these issues.

First, the Holtzman Amendment might be regarded as an ex post facto law. The Holtzman Amendment provides the authority to denaturalize and deport a person that well may have entered the country legally under 1952 legislation. Second, by admission in the legislative history, two cases are specifically mentioned that can be prosecuted if the Holtzman Amendment was approved and that cannot be prosecuted if the bill was not approved. This would appear to be a bill of attainder. Thirdly, persecution is not well defined in the bill but rather sluffed-off to substantial case law that, supposedly, defines the word well enough.

In almost any other legislation these three issues would have been enough to kill the bill or at least require major revisions prior to its enactment. However, due to the sensitivity of the bill and the still vivid memories of the Holocaust, little if any support could be mustered against its enactment.

Perhaps the worst problem with the Holtzman Amendment is the fact that through its enactment persons who may in fact be persecutors and their immediate families (who are often total innocents), now become the persecuted. In short the Holtzman Amendment develops another but different group of victims.

NAZI PERSECUTOR

A man was a ranking Nazi official in Eastern Europe under the control of an SS task master. He was required to identify all Jewish inhabitants of his

sector, to insure each was properly issued an identification card and insure that each displayed a yellow Star of David on his clothing. At a later date this information and identification would be used to round-up these same Jews, confiscate their personal belongings and most likely ship them, like cattle, to a place of extermination. Whether or not the official was a willing participant has no real bearing. Based on the large number of Jewish people he was responsible for identifying and the fact that he did what he was tasked to do, makes him a persecutor. Not too many would argue with this hypothesis.

NAZI PERSECUTED

This same man has lived in the United States since 1953. He became a naturalized citizen, has a wife and grown children and has been a model citizen since his arrival. His entry to the United States was granted under the 1952 legislation and therefore he entered legally. Under the Holtzman Amendment however, he is now found deportable and is stripped of the citizenship he gained legally. During the deportation proceedings it was found that only one small Soviet satellite country will accept him if he is deported. Germany, as well as all other nations queried, refused him entry. The one country that will accept him has clearly stated that upon his arrival he will be tried for murder and executed. Is he now the persecutor or the persecuted? Does the law help to define what action should be taken in this case? Absolutely not!

SECOND AND THIRD ORDER VICTIMS

During the entire proceeding the same man's wife and family suffered greatly. His wife suffered a stroke and is not capable of caring for herself and his children have been ostracized in the communities in which they reside. On one side strong Zionist movements have harassed the children's families and by a stroke of bad luck they were befriended by pro-Nazi groups in the United States; a relationship that is not desired. To add to the trauma the man had to deplete his meager savings to care for his wife and now faces bankruptcy and the loss of his home. Who is the victim now? Is there or should there be degrees of persecution? And who will care for the second and third order victim? It certainly is not defined by the law.

GOVERNMENT SUPPORT OR COMPLICITY

Another man, a West German citizen, applied for a visa to visit the United States. To his surprise he is turned down because he was a former member of the Waffen-SS. He has no appellate recourse so he merely accepted his fate as that of an undesirable to the United States. A thorough investigation of this man would prove that he was in fact a former Waffen-SS officer and a member of the division Das Reich in France in 1944. He was a platoon leader in the vicinity of Malmady and therefore assumed associated with battlefield atrocities. After the war he was captured by the U.S. Army, interrogated, investigated, processed through de-Nazification and released. He was never

accused of war crimes even though a thorough investigation was conducted. Yet, he is now denied entry to the United States. Is he not guilty by association and a victim of the Holtzman Amendment?

In each case above, it is clear that the Holtzman Act has the potential to produce victims as well as deport war criminals. It is also evident that mere membership in the Waffen-SS is sufficient grounds to exclude individuals from the United States.

With the passage of the Holtzman Amendment the stage was set to cleanse the United States of all aliens with Nazi backgrounds. Likewise it would preclude entry of certain categories of people no matter what their stated purpose of their visit in the United States. Included in this group were former members of the Waffen-SS who were regarded in 1945-47 at Nuremberg as war criminals and who continue to be linked as war criminals through the Holtzman Amendment. The question remains, however, should the Waffen-SS have been included? What was the Waffen-SS? Perhaps most importantly, what effect then did this legislation have on former members of the Waffen-SS who were linked by birthright to Himmler and Heydrich and even Adolf Hitler? (12) To fully understand the impact, intended or not, an explanation of the SS family tree is required.

ENDNOTES

1. "Nazi War Criminals", Congressional Quarterly Almanac, 1978, p. 193.
2. Telephone Interview with Ms. Sylvia Lerner, Director Citizen Action Center, Office of the District Attorney of Kings County, Brooklyn, New York, 17 January 1989.

3. U.S. Congress, House, Alleged Nazi War Criminals in America, Congressional Record, 3 December 1980, pp. 31986-31987.

4. Ibid.

5. Ibid., p. 31986.

6. Ibid.

7. "Nazi War Criminals", Congressional Quarterly Almanac, 1978, p. 193.

8. Ibid.

9. Ibid.

10. "Immigration and Nationality Act--Nazi Germany, P.L. 95-549," United States Code: Congressional and Administrative News, 95th Congress--Second Session 1978, vol 4 Legislative History, 1979, p. 4702.

11. "Nazi War Criminals", p. 193.

12. When considering the evil deeds of the Third Reich's Nazi Party, to include murder and racial extermination, Adolf Hitler, Heinrich Himmler and Reinhard Heydrich are some of the most notorious figures. Himmler and Heydrich were at the head of the SS leadership throughout the rise and fall of the Third Reich.

CHAPTER III

THE WAFFEN-SS: OF DUBIOUS POLITICAL ORIGIN OR JUST SOLDIERS?

When considering the SS as an organization it is imperative to understand that there were two major subdivisions, the Allgemeine-SS and the Waffen-SS. The Allgemeine-SS could be classified as the parent organization that was directly influenced and controlled by the Reichsfuehrer-SS, Heinrich Himmler. The Waffen-SS on the other hand was formed as an elite guard under the umbrella and watchful eye of the Reichsfuehrer but not under his direct control. This is key to understanding that although the roots of the two organizations are thinly linked at birth, the roles and missions of the two are greatly divergent.

The pure roots of the Waffen-SS can still be argued today. Some would pinpoint the birth of the Waffen (or weapons carrying) SS as immediately following the Nazi seizure of power in 1933. These first armed SS units began to appear in the political arm of the SS and were used primarily to protect the SS and to terrorize any faction of democratic resistance.(1) These units could easily be classified as political armies but, when formed, were not intended for use as combat soldiers in a general war. By design of mission it is reasonable to discount these armed SS units as the fountainhead of the Waffen-SS. Some scholars would argue the opposite. (2) There is no doubt however that some were later incorporated into the Waffen-SS. Research indicates that the Waffen-SS began with the formation of the Verfuegungstruppe (SS-VT).

The SS-VT was formed strictly along military lines with a primary mission of national security. Although this security role was internal, a secondary mission was to fight alongside the Army during time of war. Also of great

importance, the Reich was responsible for training and equipping the SS-VT, rather than the Nazi Party. (3) This strengthens the argument that the SS-VT was a national military force and not considered nor intended to be anything but a national military force.

The SS-VT was formed, in part, by a consolidation of regional special commando units and political squads. But also counted among its ranks during the great expansion were men from all walks of life to include: policeman, veterans of World War I and members of the Regular Army. (4) Recruits of all ages joined the ranks of the SS-VT. Their motivations were varied but never of the single purpose to form a political army. Politics, unemployment, nationalism, idealism and mere coincidence all surely played a part. A tough selection process (to include racial purity) and recognition as "besten von besten" (cream of the crop) also were not uncommon motivators. To be a member of an elite force, even by the standards set in today's armies is a strong drawing card. Elite commando units and revered "Pretorian Guard" units are even present in the U.S. Army of today. However, these present day elite units are without any connection to political party or an acquired political philosophy. This thin political connection between the Waffen-SS and its parent organization, the Allgemeine-SS, remains the primary impediment to the Waffen-SS in its quest for legitimacy.

As the SS-VT evolved and regiments formed, the Waffen-SS began to blossom. With the addition to its ranks of men of stature like Paul Hauser and Felix Steiner (5), also came the exacting military training of the Junker Schools at Bad Toelz and Braunschweig. These schools were designed to produce a new breed of warrior; tough, athletic, obedient and individually responsible

for his actions. Extreme emphasis was placed on the synergy of teamwork rather than mindless obedience. As a divergence from traditional Prussian military training, officers were encouraged to know their men and to take care of their needs. Off duty, all ranks of the Waffen-SS were required to address each other as comrade.

The best argument in identifying the origin of the Waffen-SS is made by the well-respected Paul Hauser, a former member of the Waffen-SS and its highest ranking officer. (6) His contention, and that of the HIAG (7), is that the true beginning of the Waffen-SS is an outcropping of the proclamation of universal military service. Supporters of this thought-process argue that the SS-VT was in fact a "modern experimental force" or a fourth arm of German military service. (8) However, those who oppose this theory discount it as a mere contrivance by Hauser and the HIAG to justify post-war respectability. Noted author Heinz Hoehne argues that this is only a post war manifestation of Paul Hauser and an attempt by Hauser to mask the true origins of the Waffen-SS. (9) Again, the unit mission of the SS-VT must be considered before legitimacy can be determined.

In the beginning, the SS-VT was organized as an elite Army of trusted soldiers to guard against the perceived internal threat that was posed by Jews and Bolsheviks. This threat never materialized and therefore with the evolution of the SS-VT the secondary mission became paramount; to fight alongside the Army in time of war. On 8 November 1938 Reichsfuehrer Himmler announced to the assembled Gruppenfuehrer of the SS that "the SS-VT was organized to take its part in the war by going to the field." (10) Hitler also echoed this line of thought pertaining to the mission of the SS-VT following the resignation of

Field Marshall von Blomberg and the creation of the Oberkommando der Wehrmacht (OKW) or high command. With the creation of the OKW also came the personal exercise of command, by Hitler, over all the German armed forces including the SS-VT, now called the Waffen-SS. By doing so Hitler had, to a great extent, integrated the Wehrmacht and the Waffen-SS.

The war record of the Waffen-SS that soon followed can only be categorized as unique in the annals of modern warfare. Never before had a formation been so respected, feared and viewed with suspicion from within; all simultaneously. "To many people, even today, no Waffen-SS accomplishment can be considered good, but this is a biased and emotional reaction" (11) which denies the Waffen-SS its place in history alongside other elite formations. Only a few isolated cases, that are continually set upon by a few regurgitators of history, remain to cloud their accomplishments on the field of battle. It is not difficult to find serious scholars who are ready to condemn the Waffen-SS as a whole. However, it is not so easy to find counter arguments and objective accounts of the Waffen-SS as common but elite soldiers. But, even the novice researcher can find examples to support a counter argument without enormous or exhaustive effort.

"From a military standpoint the combat achievements of the elite Waffen-SS divisions were remarkable. Their adversaries recognized their fighting qualities; for example, General Eisenhower reported to the Combined Chiefs of Staff that even in defeat the Waffen-SS morale was extremely good, and whether in attack or defense they fought to a man with fanatical courage." (12) Fear of a last ditch effort near Hitler's Alpine retreat at Berchtesgaden by the SS prompted the decision to divert U.S. troops from the drive toward Berlin. This

seemed highly probable since the 6th SS Panzer Army was withdrawing westward from an unsuccessful encounter with the Russians in the Hungarian oilfields (13) and could have been a part of the Berchtesgaden defense. Throughout the War the Waffen-SS participated in the hard fought battles of the German Army and accounted for itself very well in battle. In many of the War's fiercest battles, to include Moscow, Kursk, Kharkov and Normandy, its contributions were recognized by numerous participants. The Waffen-SS was an elite fighting force that was as integral to the German armies as was Blitzkrieg.

One very objective analysis of the Waffen-SS in battle is that of Colonel-General Heinz Guderian. In his book Panzer Leader, he makes it quite clear that the Waffen-SS was an integral part of the German fighting force.

"I fought with the SS-Leibstandarte 'Adolf Hitler' and with the SS division Das Reich: later, as Inspector-General of Armoured Troops, I visited numerous SS divisions. I can therefore assert that to my knowledge the SS divisions were always remarkable for a high standard of discipline, of esprit de corps, and of conduct in the face of the enemy. They fought shoulder to shoulder with the panzer divisions of the Army, and the longer the war went on the less distinguishable they became from the Army." (14)

In another section of his book Guderian takes Hitler and Himmler to task for their policies with respect to the Waffen-SS. He states that the outcome of their political policy "was to put the Waffen-SS in a very unpleasant position after the war, since the Waffen-SS was blamed for the misdeeds of the rest of the SS and particularly the operational commanders of the Sicherheitsdienst".

(15) The primary policies he questions regard manning and equipping the Waffen-SS with only the highest quality of both.

This objective analysis by Guderian is of major importance based on his absolute credibility. Over his long years of service in the German Army he is well known for being his own, very outspoken, man. Although he probably owed his rise to the rank of General to Adolf Hitler, he was also one of Hitler's few outspoken critics and was never afraid to speak his mind even in the presence of Hitler himself. As a Colonel-General he was relieved twice by Hitler. The last relief was subsequent to what has been described as a near physical altercation between Guderian and Hitler. His credibility as an open-minded critic of Hitler is well established.

Conversely, from the earliest days of the Waffen-SS formations it is clear that Reichsfuehrer SS Himmler had an impact and an element of control over every aspect of the SS. Depending on what point in time is examined his degree of control varies greatly but however slight, this thin umbilical cord between the Waffen-SS and its highly ideological political leader serves to cloud the history of the Waffen-SS and obscure its rightful place as an Army.

Its tie to the party, rather than the military structure is highlighted through the oath of office taken by each member:

"I swear to thee Adolf Hitler

As Fuehrer and Chancellor of the German Reich

Loyalty and Bravery.

I vow to thee and to the superiors thou shalt

appoint

Obedience unto death

So help me God." (16)

Two items are of major importance in this contradictory oath. First, no allegiance is given to the Fatherland (Germany), only to Adolf Hitler. This oath certainly strengthens the argument that the Waffen-SS was solely a political army. However, the last phrase "So help me God" directly contradicts the godless philosophy of the Nazi party. Now the question must be asked, who were these soldiers and by what standards did they live?

Their unique political tie was also complicated by a rather unusual mysticism, a pseudo-religious tie that may have originated in Himmler's Catholicism. In his book Hitler's Samurai: The Waffen-SS in Action, Bruce Quarrie provides an analogy that compares the Waffen-SS to the Japanese Samurai and the Catholic order of the Jesuits. In fact this is not an uncommon comparison. At times, Hitler was quoted as referring to the sinister Himmler as his "Ignatius" (loyal founder of the Jesuit order). (17) Certain similarities could be noted in this army to a Catholic order of priests and monks. Obedience, command structure, a rigorous two year training program and allegiance to no one except Pope or Fuehrer. The SS even had its own "order" castles. And also, like the Jesuits a great mystique that today continues to shroud the most inner circles of the Waffen-SS.

This was the foundation of the Waffen-SS. Born of political origins but legitimized as an Army by nature of its mission, training and senior officer corps. There can be little question of the contribution of the Waffen-SS to the German war effort or to the quality military training its units received, but with the German defeat of 1945 the Allies took a critical view of this organization. The Waffen-SS was identified and indicted as being criminal in

nature by the International War Crimes Tribunal at Nuremberg. (18) This position was taken despite the recognition by the tribunal of the legitimacy of the Waffen-SS as a fighting force. According to the courts record, "the SS Verfuegungstruppe was organized as an armed unit to be employed with the Army in the event of mobilization. The Waffen-SS was under the tactical command of the Army....". (19)

Through the Nuremberg judgment the Waffen-SS was branded, in the eyes of four major world governments, as a criminal organization. The result of this indictment would manifest itself in a variety of ways that could never have been envisioned by that tribunal in 1945. In one sentence the tribunal summed up what the jaundiced view of the masses would champion for the next forty-four years. "It is impossible to single out any one portion of the SS which was not involved in these criminal activities." (20) All members of the Waffen-SS, even the unwilling conscript was now guilty by association. Never have so many soldiers paid such a price to lose a war as did the Waffen-SS. Mere membership, however remote from the murder and chaos of the death camps, would follow these men forever. "The whole of the SS, from richly-deserving butchers like Eichman to the 14-year-old members of the Hitler Youth who fought with desperation beyond their years in the bloodbath that was Berlin in 1945, was tarred with the same brush." (21) All were considered guilty until proven innocent.

It is conceivable that before the indictments at Nuremberg were handed down the German General Staff could have greatly effected the outcome and could have precluded the inclusion of the Waffen-SS as an indicted organization. The daily grind of war had turned these elite legions into "normal soldiers

undistinguishable from those of the Wehrmacht".(22) The ex-Wehrmacht officers could have corrected the distorted picture of the court but preferred to hold their tongues. Their jealousies of the Waffen-SS were now manifested in retribution. Except for the outspoken Guderian it was easy to see that they had forgotten "that they had once been glad to have the elite Waffen-SS Divisions fighting alongside them". Some like Field Marshalls Kesslering and von Manstein would even add to the blanket condemnation with phrases like "the game of a spoilt child" and "paid a toll of blood incommensurate with its actual gain", when referring to the Waffen-SS. (23) Many had conveniently forgotten that at least some of their honor could be traced back to the deeds, however costly, of the Waffen-SS Divisions.

In retrospect some have come to question this blanket condemnation of both SS organizations and all of its members. As an example, Jochim Peiper was tried at Nuremberg for his part in the Malmady massacre of 71 American prisoners of war. For his indirect role in the incident, command responsibility rather than direct involvement, he was sentenced to death. The death sentence was never executed but he was in fact sentenced. In 1966, some twenty years later, Jochim Peiper received a letter from the former prosecutor in his trial, Mr. Ellis:

"I am sure that you always realized that I had no personal feelings against you or anyone else; as yourself, I was also a soldier and did my duty as well as I could....I am of the opinion that you are a fine gentleman.

On the day that your letter arrived I read in our press about the death of Sepp Dietrich. Whether you believe it or not, I had a feeling of

sadness when I read the fairly long obituary in the San Francisco Chronicle...". (24)

In spite of the judgment of Nuremberg, Jochim Peiper's chief prosecutor at Nuremberg, had subsequently concluded that Peiper was a soldier and a gentleman. Equally intriguing is the respect shown for SS General Sepp Dietrich, one of Hitler's oldest associates, who through the Waffen-SS had achieved recognition as a soldier.

That the SS was not merely a gang of political thugs and criminals is illustrated by an incident in the career of former Oberfuehrer (Brigadier General) Otto Baum. While he was in command of the 2d SS Panzer Division "Das Reich" in France in 1944, an incident occurred which indicates the soldierly values held by some Waffen-SS members. "Das Reich" captured an American medical convoy which was lost and wandered into his area. The lost American medical convoy was escorted by two American Chaplains. Baum especially enjoyed the company of one of the chaplains and within a short period of time the wounded members of the convoy were returned to American lines rather than detained as POWs. When queried about his motives for returning the convoy of wounded Baum said, "It was the only honorable thing to do as I could not adequately care for them as prisoners". (25)

This story is only documented by Baum but is believed to be true and provides insight into at least one Waffen-SS senior leader's sense of justice, honor and battlefield ethics. At times near the end of the war Otto Baum commanded up to 36,000 soldiers. Today he lives in obscurity in Southern Germany, denied military pension or recognition as a soldier by his own

government. Yet, he is duly recognized as a hero and proudly wears the Knight's Cross with Oak Leaf and Swords at formal national-functions.

Other stories of soldierly deeds, honor and ethical conduct by the Waffen-SS can be found by the objective researcher who wishes to base his conclusions on balanced information. It is unfortunate that, for the most part, research regarding the Waffen-SS is extremely one-sided. This circumstance certainly detracts from the organization's quest for legitimacy.

The United States and the Nuremberg Tribunal are not alone in their condemnation of the Waffen-SS. This sentiment has carried over to the Bundeswehr which is forbidden to have official contact with the HIAG but with which in reality has numerous unofficial ties. Although the Bundeswehr has publicly stated that it has nothing against former members of the Waffen-SS it has also decreed that, "at the moment he (former Waffen-SS soldier) expresses the ideas of the SS, he is no longer a soldier". (26)

This continuing resentment was made very clear when in December of 1987 the author was invited to address the Stuttgart chapter of the HIAG. The welcome received was extremely warm as was the welcome extended to other guests. Only when known members of the Bundeswehr were introduced was a voice from a far corner heard to say, "the U.S. Army has uniforms, what about the Bundeswehr?" I had worn my uniform, to the astonishment of some, but the Bundeswehr had not. If guilt, or shame, by association is still considered valid enough to attend HIAG functions only in civilian clothing, then attendance, by nature of conviction, should be declined. If it is not an outlaw association then there should be no shame in an official contact.

Despite an impressive war record the Waffen-SS remains a criminal organization in the judgment of Nuremberg and in the popular western mind. As a result of this perception that the Waffen-SS was a gang of thugs and political hacks that persecuted select groups in Europe and a failure to discriminate between the Allgemeine-SS and the Waffen-SS, the former membership of the Waffen-SS has come under the jurisdiction of the Holtzman Amendment. Consequently a block of German veterans, men who consider themselves soldiers, are excluded from the United States. Some of these exclusions are due to the law and its vague wording, but part of it is due to the power of the bureaucrat.

ENDNOTES

1. Heinz Hoehne, The Order of the Death's Head, p. 495.
2. Ibid.
3. Ibid., p. 498.
4. Grosser Bildband ueber die Waffen-SS, Wenn all Brueder Schweigen, p.13.
5. Paul Hauser was a retired German Army Lieutenant General prior to World War II. In 1933 he joined the SS to command the SS-VT. At war's end he was the senior ranking officer of the Waffen-SS with rank equal to a Colonel General of the Wehrmacht. He was well-respected by both the Waffen-SS and the

Wehrmacht. Felix Steiner was also a well-respected former German Army Officer who joined the ranks of the Waffen-SS.

6. See note 5. above.

7. See note 3, Chapt. I.

8. Hoehne, p. 495.

9. Ibid., p. 498.

10. George H. Stein, The Waffen-SS: Hitler's Elite Guard at War 1939-1945, p. 16.

11. Bruce Quarrie, Hitler's Samurai: The Waffen-SS in Action, p.7.

12. Stein, p. 289.

13. Ibid.

14. Heinz Guderian, Panzer Leader, p.447.

15. The SS Security Service was formed in 1932 under Reinhard Heydrich. Its intended use was to be the sole Nazi Party intelligence organization. The organization was indicted for numerous separate atrocities at the Nuremberg

Trial. It was directly involved in the collection, removal and eventual extermination of German and Slavic Jews.

16. Quarrie, p. 26.

17. Ibid.

18. International Military Tribunal, Trial of the Major War Criminals, Volume I, p. 269.

19. Ibid.

20. International Military Tribunal, Trial of the Major War Criminals, Volume XXII, p. 515.

21. Quarrie, p. 7.

22. Guderian, p. 447.

23. Hoehne, p. 494.

24. Wenn alle Brueder Schweigen, p. 29.

25. Interview with Otto Baum, Oberfuehrer (Brigadier General) Waffen-SS, Last commander 2d SS Panzer Division "Das Reich", Hechingen-Stetten, Federal Reppublic of Germany, October 1987.

26. Donald Abenheim, Reforging the Iron Cross, p. 213.

CHAPTER IV

THE POWER OF THE BUREAUCRAT

As stipulated in the legislative history of the Holtzman Amendment the administration of the law was split between two departments; The Department of Justice and the Department of State. (1) As the bill was being drafted there was much concern over its administrability. Some were concerned that, as written, the bill could not be fairly administered by either department. Primary arguments revolved around ex post facto, bill of attainder and the failure to define persecution. These matters, for the most part, were argued prior to the bill's passage but did of course rise to the forefront time and time again during legal proceedings. In general, the courts have consistently upheld the Justice Department's position; the bill is constitutionally sound and does not constitute ex post facto legislation or present a bill of attainder.

Not too much outward concern was expressed by Congress about the administrability of the bill by the State Department. However, quiet interest was displayed by the State Department itself, due to the belief that too much regulatory guidance would hinder the department's ability to conduct business. The State Department was also concerned about how to define persecution but rather liked not having it defined for them. State Department officials wanted the latitude to make decisions themselves and not have diplomatic proceedings thwarted by a law. (2)

To satiate the concerns of the House Judiciary Committee the following language was offered for and included in the legislative history of the bill.

"Both the Departments of Justice (Immigration and Naturalization Service) and State (Bureau of Consular Affairs) have assured the committee that regulations, borrowing from related domestic and international law, and setting forth specific and clearly identifiable standards to be applied by the consular and immigration officers, will be developed." (3) With respect to the Justice Department, codification has taken place. However, the State Department by design, has yet to develop any guidelines and certainly has no clearly identifiable standards for the application of the Holtzman Amendment. (4)

In an interview at the State Department a specific question asked was; "what guidance is given to the officers who adjudicate these cases for visa requests?" The primary official replied, "Very little", while the consular official who handles each case answered, "none". The primary official followed up by saying; "and that was not an accident. That was a deliberate decision on my part in 1979. We've got to control this thing from Washington and we've got to say as little as possible about it". (5) It was pretty clear from his point of view that his department would be the judge and jury in all cases.

In an attempt to elicit a clearer picture the question was redirected to the consular official. He was asked what guidelines or standards he was bound by in his determination of the persecution cases. Again, he answered "none"! He elaborated a bit by saying that a "33" case was the only case that had no regulatory guidance, case interpretation, or advice notes of any kind; while every other type case, 212. 8 . 1 through 32 did have clear standards. (6)

This then indicates that the congressional guidance with respect to "clearly identifiable standards" was not followed and that it was done intentionally by a mid-level bureaucrat who, it would appear, "knew better than

Congress" just how to administer the law. It is here that the question of fairness begins to unravel. Lack of standardization and a changing consular official every few years makes it easy to envision why the average former Waffen-SS soldier might not get fair consideration in the visa process.

In a circular letter to all consulates the official who reviews these cases stated that; "The definition of persecution is bound to change every time an officer transfers through this job. Because the only person defining persecution is the person adjudicating the case; there is no criteria for definition of terms. My definition is different from my predecessor who had a completely different orientation." (7) Now the concern of the Congress to codify "clearly identifiable standards to be applied" can be better understood. Whether or not this is the context in which they envisioned the standards being applied is questionable. However, it is clear that the mistrust of some bureaucrats is well placed.

It is of interest at this point to consider a line of thinking used by Sophie H. Pirie in her article "The Need for a Codified Definition of Persecution in United States Refugee Law", published in the Stanford Law Review in November, 1986. Although her primary arguments are centered around refugees to be returned to Haiti and Central American countries, where they would possibly be persecuted, the need for a codified definition also applies when placed in the context of a "33" case.

Ms. Pirie argues that "clear and authoritative standards, combined with a duty of public justification, can play a crucial role in ensuring quasi-substantive due process by directing and constraining decision-making behavior and by forcing substantive starkness upon decisions--a starkness that provides

an appropriate and coherent target for those who disagree with the standards".

(8) In essence it would allow a bureaucrat, in this case the consular official, to hang his hat on a clear cut law or regulation. "The law says", could be an easy and fair answer. However at present, as explained above, the bureaucrat in power at the time of the visa application will define persecution as he or she sees fit.

Ms. Pirie also argues the fairness issue by saying, "It is also important to remember that effective guarantees of fair treatment require effective judicial review of disparate treatment. This review, in turn, requires a definition of persecution that binds all evaluators of persecution". (9) She goes on to say that without a definition there is no "inter-branch and inter-agency" continuity. Only a congressional definition can tie all agencies together and allow the courts the opportunity for a "rigorous review" of "substantial evidence" to determine if "abuse of discretion" applied. Most importantly Ms. Pirie argues that "definitional clarity would do much to alleviate the political expertise mystique, which currently surrounds persecution determinations". (10)

Again, it is of interest to note that although Ms. Pirie is arguing for refugee law, her arguments fit perfectly with respect to any determination of persecution, especially the State Department's consular official that reviews "33" cases. There is no codified definition of persecution and therefore no standard by which fair treatment can be measured. It is easy to see why the former Waffen-SS member can easily develop a perception of unfair treatment and how the entire body of former Waffen-SS soldiers can believe that they are undesirable under United States Law when, in fact, they are not.

It is easy then to agree that the determination of the so called "33" case is very subjective. It is also proven that the subjectivity of these cases was in part, built in, by design, by a State Department bureaucrat. However, based on Ms. Pirie's arguments it is not fully understood why the State Department would not want a "clearly identifiable standard" by which to judge each case and so the question was asked. The primary State Department official offered this example.

About five years ago the Catholic Church, in an attempt to correct major financial problems, organized a multi-national Papal commission to study the problem and make recommendations. The Pope drew upon the most highly respected and successful church laymen he could identify in the international banking community. One of his appointees was a highly successful German banker with world-wide connections. However, this man had held high office in the Third Reich's Nazi government and under the "government support or complicity" clause he was considered by many officials in the United States to have aided in persecuting persons for various reasons. In addition, like so many ranking German officials he held an honorary rank in the Waffen-SS. Like most members of the Waffen-SS he was not tried at Nuremburg nor even indicted. Yet, he was to be branded a persecutor, due to his high office in the Third Reich.

Suppose that this individual, on a mission for the Pope, had wanted to confer with David Rockefeller in New York? If the word persecution were codified by law or State Department regulation, there would be no possibility for diplomatic maneuvering. A denial of entry to a Papal emissary would probably cause diplomatic unrest with the Vatican, the Italian government, the

German government and a large portion of the Catholic population in the United States. But doesn't this amplify the perception of a double standard or no standard at all? Not according to the State Department; this is just good diplomatic flexibility.

What equates to flexibility in the case of a Papal emissary would be considered unfair treatment in the case of a former Waffen-SS soldier. Historically, much maneuvering would be negotiated to accommodate the Papal emissary while the slightest hint of a persecutorial role by a former Waffen-SS member would be grounds for exclusion. A case of a former Waffen-SS soldier on record at the State Department will be used to demonstrate this point.

Herr Eugen Schmidt is a resident of Stuttgart, Germany. After World War II he rose to the prominent position of Jaegermeister of Stuttgart and held high position in the forestry department of the city government. He is well respected for his professional work over the years and is also a prominent figure in the German-American community. As a private citizen he has done much to encourage and allow American servicemen to enjoy the sport of hunting while stationed in Germany. Most of this endeavor is on his own time and at his own expense. Needless to say, he provides a great service to the Americans he has befriended.

One of these American friends and a hunting partner is Doctor (LTC) Larry Bruestle, the former Chief of Veterinary Services in Stuttgart. Dr. Bruestle developed a close relationship with Herr Schmidt and upon his departure from Germany invited Herr Schmidt to visit him and hunt with him in the United States. However, due to his past membership in the Waffen-SS, he was denied a

visa. The State Department was willing to discuss the case and provided the following reason for exclusion.

At some point during his war years Herr Schmidt served in an agricultural department of the SS which was known to have been an active agency in the resettlement of Jews. Although there were thousands of officials in this department and Herr Schmidt's specific duties were unknown, his mere association with this element was enough to deny him a visa under paragraph "33"; he was branded a persecutor under the Holtzman Amendment. No clear evidence was available to specifically tie him to an act of persecution, but, he was considered guilty by association.

When queried further the consular official stated that Herr Schmidt's mere association with that element of the SS was enough for denial of his visa request. He then elaborated on other cases where the same rule of thumb was applied. As an example he said if a former Waffen-SS soldier was a member of the division "Das Reich", which is associated with the Oradur Massacre, he would automatically deny him entry to the United States. Or, if the requestor was a member of the division "Prinz Eugen", which was in his words, "involved in nothing more than terror and persecution", he would also be denied a visa to visit the United States. This philosophy strongly suggests that there is no exacting, fair, case by case determination of the "33" case. Guilty by association is, and apparently will continue to be, the "rule of thumb" when considering any former SS members.

Having intimate knowledge of Herr Schmidt's case the author was able to pursue it further. The consular official allowed that a decision may have been rendered in haste but would not admit that it was an unfair judgment. On the

positive side he did agree that if Herr Schmidt's U.S. sponsor (Dr. Bruestle) would call him he would be willing to discuss the case. He also agreed to reconsider the case if Herr Schmidt would resubmit and provide more detailed information about the dates and locations of his war years. The consular official offered the comment that none of his predecessors would reconsider cases; all decisions were final. His offer to reconsider Herr Schmidt's case would set a precedent.

In reviewing the bureaucratic administrator it is easy to see that a great amount of power is vested in his office. Not only is the opportunity present to ignore Congressional guidance by failing to publish regulations but also to become judge and jury. Clearly, if an elected official were to ever take issue with the cavalier approach the State Department officials have taken, with respect to this portion of the Holtzman Amendment, people would be called to task for their actions. However, due to the obscurity of the bill and the small number of people it involves, it is unlikely that its administration will ever be scrutinized. Only a fluke, like the Papal emissary, could ever evoke action from an elected official. No civil servant is likely to take issue with a law that is designed to conclude the "unfinished business of World War II".

This final argument of whether or not the State Department followed Congressional intent begs inquiry on a much larger scale. The question that needs to be answered is; how often does the Executive Branch not follow Congressional intent? And, could there be a link to our inability to conduct a clear and consistent foreign policy if professional bureaucrats cannot be trusted to execute legal guidance? Legislation is of no use if it is not enforced by the agencies designated by Congress as the administrative body.

This minor example of failure to follow Congressional intent and guidance is an excellent example of why Congressional oversight is important.

ENDNOTES

1. "Immigration and Nationality Act--Nazi Germany, P.L. 95-549." United States Code: Congressional and Administrative News, 95th Congress--Second Session 1978, vol 4 Legislative History, 1979, p. 4706. (hereafter referred to as Legislative History).

2. Interview with Cornelius Scully, Chief, Office of Legislation, Regulations, Advisory Assistance, Consular Affairs Division, U.S. Department of State, Washington, 13 January 1989. (hereafter referred to as Interview State Department.)

3. Legislative History, p. 4706.

4. Interview State Department.

5. Ibid.

6. Refers to 8 U.S. Code paragraph 212.8.33. A "33" case is one involving a suspected Nazi war criminal covered in subparagraph 33 of 8 U.S. Code, section 212, paragraph 8.

7. Interview State Department.

8. Sophie H. Pirie, "The need for a codified Definition of Persecution in United States Refugee Law", Stanford Law Review, November 1986, p. 230.

9. Ibid., p. 231.

10. Ibid.

CHAPTER V

CONCLUSION

What began as a simple quest to discover why former members of the Waffen-SS were denied entry to the United States, without a hearing and without knowing the charges levied against them, has been answered but has also developed a set of broader questions. Admittedly the Holtzman Amendment is the root cause or the basic law that drives the exclusion of these former soldiers. But on a broader scope it is difficult to discern the true intent of the legislation, difficult if not impossible to define persecution and even tougher to untangle the web of diplomatic and consular intrigue that surrounds the State Department's cavalier approach to administering the law. It is, however, very simple to understand how a person who is affected by the law can consider it unfair and assume that it specifically denies entry to all former members of the Waffen-SS. It also clearly begs the interested student to ask the broader question; "is our foreign policy, that is many times judged by our allies to be inconsistent, a by-product of professional, mid-level bureaucrats that ignore the law and ignore congressional intent?" What then are the conclusions of this study and are recommendations in order?

First, it is unavoidable to conclude that the Holtzman Amendment is administered in anything but an inconsistent manner. Though given authority by the bill, the State Department ignored provisions in the bill to publish guidance and regulations to aid in its administration thus leaving it, by design, to the whims of mid-level bureaucrats. Further complicating the issue is the personnel turbulence so familiar in many government agencies. By

admission of the State Department, the sixth consular official to administer the law will report for duty this summer, the sixth person to administer the law in ten years. With this official will undoubtedly come a new bias, a new approach and a new set of rules, none of which are codified. By design the State Department mid-level bureaucrats have not adhered to the guidance in the Holtzman Amendment to publish clear guidelines for the administration of the law. Thus, as a consequence the administration of the law is inconsistent and based on the opinion of individuals in the office, rather than according to clear guidelines.

Secondly, as pointed out by Ms. Pirie in her article in the Stanford Law Review, there is a clear need to codify the definition of persecution. As demonstrated in the body of this study it has a variety of meanings and is left to individuals with their own opinion to define rather than due to carefully worded guidelines or regulation. For the most part the staff administering the law are learned individuals, but they have their own biases. This does not make for a consistent adjudication of case law nor prompt consistent foreign policy. A definition of persecution should be legislated by Congress to ease the burden of individual administrators and to aid in making United States foreign policy consistent. Likewise, action should be taken by Congress to force the development of regulating guidelines within the State Department.

Thirdly, it is very difficult to determine the true intent of the Congress with respect to former members of the Waffen-SS. By accepting the literal wording of the legislation it would be easy to determine that each individual would be considered in a fair and unbiased manner. If an individual was involved in persecution he would be excluded from entering the United States.

However, it is not quite that simple. If one simply uses the Nuremberg indictment of the Waffen-SS to make the determination then all former members of the Waffen-SS would be excluded. Likewise, if the underlying or gut feeling taken from the Congressional hearings is used then again one would determine that complete exclusion was intended. But when key Congressional staff members, Justice Department officials, State Department officials and former congressmen were queried about the Holtzman Amendment's true intent toward former members of the Waffen-SS, a wide variety of answers and opinions were rendered. It seems obvious that a clear-cut intent of the Congress with respect to former members of the Waffen-SS is not articulated in the Holtzman Amendment and therefore leaves a great deal of ambiguity for bureaucrats to deal with. It is also easy to conclude that the Holtzman Amendment is unclear because it is a piece of legislation designed to affect a specific population and did not receive widespread support in Congress. The Congress clearly did not consider the second and third order effects of the bill or if they did, the expected effects are consistent with the outcome.

Lastly, overwhelming evidence leads to the conclusion that the Waffen-SS was a legitimate extension of the Wehrmacht--an integral part of the German army. Although tainted by its dubious origin and therefore "tarred with the same brush" (1) as the Allgemeine-SS and the extermination camps, the vast majority of its force fought alongside or incorporated into regular army formations. Its Runic collar patch, death's head insignia and elite status only added to its mystique. In reality it was an elite formation of almost 1 million men, many of whom were drafted into the service of their country.

It is relatively easy to conclude that the Holtzman Amendment leaves much latitude to the bureaucrat when considering the desirability of the Waffen-SS for purposes of visa. If the State Department would codify its administrative procedures; if a definition of persecution were codified by the Congress and; if each individual were fairly judged by the standardized criteria, then and only then could the Holtzman Amendment be considered fair and unbiased when dealing with a former member of the Waffen-SS.

If recommendations were to be requested of this author they would be four-fold: Codify the definition of persecution so that each case was judged equally; Direct the State Department to write and publish administrative regulations by which to administer its "33" cases; Clarify the intent of the Congress in the Holtzman Amendment. If Congress clearly intended to exclude all former members of the Waffen-SS then so state and bring the controversy to a close; Finally, if cases of former Waffen-SS are to be legitimately considered for visa processing, clearly state on the application that they are subject to scrutiny by the Holtzman Amendment, outline the content of the law and explain what they themselves can do, by means of supplying detailed, accurate information, to assist in processing the application. This would make the process open and just, and tend to dissipate its mystique.

Waffen-SS: Friend or Foe?

If a person truly wishes to answer this question he must "leave his position of vantage high above the crowd and circulate among the people. He must look into their faces and take part in their discussions". (2) This study has been an attempt to do that and to draw upon numerous encounters and long hours of discussion with former members of the Waffen-SS. In general they are honest men and were good soldiers who fought for their country in a patriotic manner. As individuals they are not the murderers and henchmen so often described in news accounts and for the most part those members of their formations who were guilty of war crimes have been tried and punished many years ago. To consider all former members of the Waffen-SS as undesirable and therefore not eligible to visit the United States is an injustice and tantamount to guilt by association.

ENDNOTES

1. Bruce Quarrie, Hitler's Samurai: The Waffen-SS in Action, p. 7.
2. Grosser Bildband ueber die Waffen-SS, Wenn all Brueder Schweigen, p.11.

BIBLIOGRAPHY

Books

1. Abenheim, Donald. Reforging the Iron Cross: The Search for Tradition in the West German Armed Forces. Princeton, Princeton University Press, 1988.
2. Davidson, Eugene. The Nuremberg Fallacy: Wars and War Crimes Since World War II. New York, MacMillan, 1973.
3. Grosser Bildband ueber die Waffen-SS. Venn all Brueder schweigen, Osnabrueck, FRG: Munin--Verlag GMBH, 1981.
4. Guderian, Heinz. Panzer Leader. New York, E.P. Dutton & Company, Inc., 1952.
5. Hoehne, Heinz. The Order of the Death's Head. New York, Ballentine Books, 1983.
6. Kraetschmer, Ernst-Guenther. Die Ritterskreutz-traeger & der Waffen-SS. Pruessisch Oldendorf, FRG, Verlag K.W. Schuetz KG, 1982.
7. Luther, Craig W.H. Blood and Honor: The History of the 12th SS Panzer Division "Hitler Youth," 1943-1945. San Jose, R. James Bender Publishing, 1987.
8. Myerson, M.H. Germany's War Crimes and Punishment: the problem of individual and collective criminality. Toronto, MacMillan Co. of Canada, 1944.
9. Quarrie, Bruce. Hitler's Samurai: The Waffen SS in Action. Cambridge, Patrick Stephens, 1983.
10. Riemann, Viktor. Goebbels, Garden City, N.Y.: Doubleday and Company, Inc., 1976.
11. Reitlinger, Gerald. The SS Alibi of a Nation 1922-1945. London, Arms and Armour Press, 1981.
12. Ruckerl, Adalbert. The Investigation of Nazi Crimes, 1945-1978: a Documentation. Heidelberg, C. F. Mhuller, 1979.
13. Ryan, Allan A. Quiet Neighbors: Prosecuting Nazi War Criminals in America. San Diego, Harcourt Brace Jovanovich, 1984.
14. Schultze-Kossens, Richard. Militaerischer Fuehrernachwuchs der Waffen-SS Die Junkerschulen, Osnabrueck, FRG: Munin-Verlag GMBH, 1987.
15. Stein, George H. The Waffen-SS: Hitler's Elite Guard at War, 1939-1945, Ithaca, Cornell University Press, 1966.

16. Taylor, Telford. Nuremburg and Vietnam: an American tragedy. Chicago, Quadrangle Books, 1970.

17. Time-Life Books. The SS. Alexandria, Va: Time-Life Books, Inc., 1988.

Journals/Magazines

1. Federal Reporter: Second Series. Artukovic v. INS, No. 81-7415. United States Court of Appeals, Ninth Circuit. Vol. 693, pp. 894-899. St. Paul, West Publishing Company, 1982.

2. Federal Reporter: Second Series. United States of America v. Kairys, Nos. 85-1314, 85-1397. United States Court of Appeals, Seventh Circuit. Vol. 782, pp. 1374-1384. St. Paul, West Publishing Company, 1986.

3. Federal Reporter: Second Series. Kulle v. INS, No. 86-1277. United States Court of Appeals, Seventh Circuit. Vol. 825, pp. 1188-1196. St. Paul, West Publishing Company, 1987.

4. Federal Reporter: Second Series. United States of America v. Kungys, No. 83-5884. United States Court of Appeals, Third Circuit. Vol. 793, pp. 516-533. St. Paul, West Publishing Company, 1986.

5. Federal Reporter: Second Series. Laipenieks v. INS, No. 83-7711. United States Court of Appeals, Ninth Circuit. Vol. 750, pp. 1427-1442. St. Paul, West Publishing Company, 1985.

6. Federal Reporter: Second Series. Linnaas v. INS, No. 895, Docket 85-4163. United States Court of Appeals, Second Circuit. Vol. 790, pp. 1024-1032. St. Paul, West Publishing Company, 1986.

7. Federal Reporter: Second Series. United States of America v. Schellong, No. 82-2948. United States Court of Appeals, Seventh Circuit. Vol. 717, pp. 329-336. St. Paul, West Publishing Company, 1983.

8. Federal Reporter: Second Series. Schellong v. INS, No. 85-2430. United States Court of Appeals, Seventh Circuit. Vol. 805, pp. 655-663. St. Paul, West Publishing Company, 1986.

9. Federal Reporter: Second Series. United States of America v. Sprogis, No. 391, Docket 84-6223. United States Court of Appeals, Second Circuit. Vol. 763, pp. 115-124. St. Paul, West Publishing Company, 1985.

10. "Immigration and Nationality Act--Nazi Germany, P.L. 95-549." United States Code: Congressional and Administrative News, 95th Congress--Second Session, 1978, Vol. 4 Legislative History, 1979.

11. Kramer, Jane. "Letter From Europe." The New Yorker, 30 June 1986, pp. 65-77.

12. Kren, George M.; Rappoport, Leon H. "The Waffen SS: a social, psychological perspective". Armed Forces and Society, Vol. 3, November 1976, pp. 87-102.

13. Massey, Stephen J. "Individual Responsibility for Assisting the Nazis in Persecuting Civilians." Minnesota Law Review, Vol. 71:97, 1986, pp. 97-170.

14. "Nazi War Criminals," Congressional Quarterly Almanac, Vol. XXXIV, 1978, pp. 193-194.

15. "New Court Decisions: Significant Opinions Not Yet Generally Reported--Aliens and Citizenship." The United States Law Week, Vol. 46 No. 20, 22 November 1977, p. 46 LW 2251.

16. Pirie, Sophie H. "The Need for a Codified Definition of Persecution in United States Refugee Law." Stanford Law Review, Vol. 39:187, November 1986, pp.187-234.

17. "Scope Narrowed on Floor: Bill Aimed at Nazi War Criminals Passed by House." Congressional Quarterly Weekly Report, Vol. XXXVI No. 39, September 1978, pp. 2625.

Newspapers

1. "Agency Studying Nazis Is Upgraded." New York Times, 29 March 1979, p. A18.

2. Anderson, Jack; Van Atta, Dale. "Retired Auto Workers on Trial for Life: "Ivan the Terrible?" Washington Post, 4 January 1987, p. B6.

3. "A Dispute Over Funds Mires Federal Investigation of 175 Alleged Nazi War Criminals in U. S." New York Times, 25 March 1979, p. A21.

4. "Divisiveness on war-criminal issue worries Canada." Patriot News (Harrisburg, PA), 8 February 1987, p. A7.

5. "Elsewhere in the World--War Crimes." USA Today, 9 February 1989 p. 4A.

6. "Extreme-right group gets 8% of West German vote." Patriot News (Harrisburg, PA), 30 January 1989, p. A6.

7. "Former SS colonel Held In Murder of 105 in War." New York Times, 15 November 1979, p. A10.

8. "Green Party Member, An Ex-Nazi, to Resign." New York Times, 14 March 1983, p. A10.

9. "Guard in Nazi Camp Retains Citizenship." Washington Post, 27 July 1978, p. A28.
10. "Israeli Assails Justice edpt. on Accused Nazi." New York Times, 26 January 1981, p. A19.
11. "Kohl Lauds Waldheim as Patriot." Patriot News (Harrisburg, PA), 27 April 1987, p. A12.
12. "Other Cases." New York Times, 6 October 1980, P. B8.
13. "Reagan Signs Bill Making U.S. Party to Genocide Treaty." Washington Post, 5 November 1988, p. A5.
14. "Socialists Sign Accord on Austrian Coalition." New York Times, 12 May 1983, p. A7.
15. "Trial Underway for Floridian Charged as Nazi Collaborator." New York Times, 8 December 1982, p. A22.
16. "U.S. Drops Case Against Suspected Nazi Criminal." New York Times, 27 November 1980, p. A20.
17. "U.S. Moves to Revoke Citizenship of Subject in Eichman Program." New York Times, 28 May 1981, p. B9.
18. "Use of Soviet evidence in hunt for war criminals stirs doubts." Patriot News (Harrisburg, PA), 27 April 1987, p. A12.

Public Documents

1. The International Military Tribunal. Trial of the Major War Criminals, Vol. I pp. 27-29, 80-82, 268-273; Vol. XXII pp. 512-523. Nuremburg, 1948.
2. United States Code Annotated. Title 8, Aliens and Nationality. 1-1251, 1252-1434, 1435-end. St Paul: West Publishing Company, 1970.
3. U.S. Congress. House. Alleged Nazi War Criminals in America. Congressional Record 3 December 1980. Washington: Government Printing Office.
4. U.S. Congress. House. Subcommittee on Immigration, Citizenship, and International Law, Committee on the Judiciary, Hearing on Alleged Nazi War Criminals. Serial No 95-39 1977, 95th Cong. 1st Sess. Washington: Government Printing Office, 1978.
5. U.S. General Accounting Office. Nazis and Axis collaborators were used to further U.S. anti-communist objectives in Europe--some immigrated to the United States: report by the Comptroller General of the United States. Washington: General Accounting Office, 1985.

Letters

1. Balt, Lewis G. Colonel U.S. Army. Letter to Mr. Friedrich Weyh, 10 June 1955.
2. Barman, Robert W. Major U.S. Army. Letter to Mr. Friedrich Weyh, 27 November 1953.
3. Baum, Otto. Oberfuehrer (Brigadier General) Waffen-SS. Letter to author, 16 January 1988.
4. Berner, Heinz. Private Citizen Federal Republic of Germany. Letter to author, 6 September 1988.
5. Berner, Heinz. Private Citizen Federal Republic of Germany. Letter to author, 17 November 1988.
6. Berner, Heinz. Private Citizen Federal Republic of Germany. Letter to author, 29 November 1988.
7. Brown, Jack A. Department of the Army Civilian. Letter to Mr. Friedrich Weyh, 26 May 1954.
8. Brown, Jack A. Department of the Army Civilian. Letter to Mr. Friedrich Weyh, 15 September 1955.
9. Holtzman, Elizabeth. District Attorney of Kings County, Brooklyn New York. News release, 22 April 1988.
10. Holtzman, Elizabeth. District Attorney of Kings County, Brooklyn New York. Letter to Honorable Edwin Meese III, United States Attorney General, 23 May 1988.
11. Holtzman, Elizabeth. District Attorney of Kings County, Brooklyn New York. News release, 24 May 1988.
12. Holtzman, Elizabeth. District Attorney of Kings County, Brooklyn New York. News release, 7 November 1988.
13. Lerner, Sylvia. Director Citizen Action Center, District Attorney of Kings County, Brooklyn New York. Letter to author, 24 January 1989.
14. Richt, Herbert. Private Citizen Federal Republic of Germany. Letter to American General Counsel Stuttgart, 14 April 1988.
15. Romano, Joe. Regional Vice President, Grolier Interstate Inc. Letter to Mr. Friedrich Weyh, 1 October 1976.
16. Weyh, Friedrich. Private Citizen Federal Republic of Germany. Letter to author, 25 November 1988.

Interviews

1. Baum, Otto, Oberfuehrer (Brigadier General) Waffen-SS. Last commander, 2d SS Panzer Division "Das Reich". Personal Interview. Hechingen-Stetten, Federal Republic of Germany: October 1987.

2. Bruestle, Larry, LTC (D.V.M.). U.S. Army Veterinary Corps. Telephonic Interview, 11 January 1989.

3. Eilberg, Joshua. Former Chairman, Subcommittee on Immigration, Citizenship, and International Law, Committee on the Judiciary, U.S. Congress, House of Representatives. Telephonic Interview, 1988.

4. Lerner, Sylvia. Director Citizen Action Center, Office of the District Attorney of Kings County, Brooklyn New York. Telephonic Interview, 17 January 1989.

5. Schweizer, James. Counsel to the Committee on the Judiciary, U.S. Congress, House of Representatives. Telephonic Interview, 15 January 1989.

6. Scully, Cornelius "Dick". Chief, Office of Legislation, Regulations, Advisory Assistance, Consular Affairs Division, U.S. Department of State. Personal Interview. Washington, 13 January 1989.

7. Smith, Fred. Foreign Service Officer, Office of legislation, Regulations, Advisory Assistance, Consular Affairs Division, U.S. Department of State. Personal Interview. Washington, 13 January 1989.